



November 17, 2017

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *Advanced Methods to Target and Eliminate Unlawful Robocalls (CG Docket No. 17-59); and  
Petition for Rulemaking and Declaratory Ruling regarding Prior Express Consent under the  
Telephone Consumer Protection Act of 1991 (CG Docket No. 02-278, CG Docket No. 05-338)*

Dear Ms. Dortch:

On November 15, 2017, the undersigned, on behalf of the National Retail Federation (NRF), along with our members Jonathan Avila of Wal-Mart Stores, Inc., Christopher Gassett of HSN, Inc., Arnold Grothues of J.C. Penney Company, Charles Miller of Macy's, Inc., Amy Oberhelman of Target Corporation, and Katy Poterjoy of QVC, Inc., met with Commissioner Michael O'Rielly and Amy Bender from the Office of Commissioner O'Rielly regarding certain issues, as further detailed below, that were discussed in the comments of NRF filed with the Commission in March and August of 2017 in the above-referenced proceedings. Also on that day, we met with Travis Litman of the Office of Commissioner Rosenworcel, and with Nirali Patel of the Office of Commissioner Carr, regarding the same.

At these meetings, we discussed NRF's support for (i) an FCC-established centralized database for reassigned telephone number information, and (ii) the Commission's establishment of a "safe harbor" from violations of the Telephone Consumer Protection Act (TCPA) for callers who use or access reassigned number information provided in such a database, as further detailed in our filed comments from August 2017 (a printed copy of which was provided to the meeting participants from the Commission).<sup>1</sup> We explained NRF's principal reason for supporting a centralized database is that it would provide a "single source of truth" regarding mobile number reassignment, which would not be the case under any other alternative mechanisms proposed in the Commission's Notice of Inquiry.<sup>2</sup> We also noted that a safe harbor for accessing the centralized database should extend for some specified period exceeding the minimum period for required voice service providers (VSPs) to report reassigned numbers, as this time period would ensure that erroneous calls or text messages to reassigned numbers due to VSP reporting delays are not TCPA violations because callers would have no other guaranteed method to verify numbers it called or texted in error had been reassigned during the lag time between the reassignment date and the VSP's delayed reporting of that reassignment.<sup>3</sup>

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<sup>1</sup> See Comments of the National Retail Federation, CG Docket No. 17-59, at pp. 4 - 10 (August 29, 2017).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

At these meetings, we also discussed common types of informational or transactional calls or text messages from retailers to their customers, including texts indicating package delivery times or unexpected delays in delivery, text messages notifying customers when their online orders are ready for in-store pick-up, and reminder calls or text messages to pharmacy customers that prescribed medicine is ready for pick-up, as further detailed in our filed comments from March 2017 (a printed copy of which was provided to the meeting participants from the Commission).<sup>4</sup> We explained that retail customers provide their mobile numbers to retailers for these purposes because they want to receive these timely informational or transactional calls or messages, and that petitioner's proposal to require prior written consent to receive these communications would be needlessly burdensome and frustrate consumer preferences and expectations to receive such timely calls or texts from retailers.<sup>5</sup> We noted that continuing to permit businesses to rely on the existing TCPA rules requiring implied consent for informational or transactional calls or text messages in these instances is a sensible rule that supports beneficial business-customer communications.<sup>6</sup>

We also noted in these meetings NRF's concerns with the TCPA's "any means" test for a customer's revocation of consent to receive calls or text messages, as further described in each of NRF's filed comments referenced herein.<sup>7</sup> We explained technical and practical problems retailers may face if a customer purposefully avoids using available, automated methods to cease mobile text messages (e.g., replying "STOP" to a received text message as instructed in the message itself) to instead orally inform a random, in-store sales clerk uninvolved in such communications (e.g., temporary employee hired for the holiday shopping season) that he or she was revoking consent.<sup>8</sup>

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. §1.1206, this ex parte notification is being filed for inclusion in the public record of the above-referenced proceedings.

Sincerely,

/s/

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Paul G. Martino  
Vice President, Senior Policy Counsel  
National Retail Federation

cc: The Honorable Michael O'Rielly, Commissioner  
Ms. Amy Bender  
Mr. Travis Litman  
Ms. Nirali Patel  
Mr. Jonathan Avila  
Mr. Christopher Gassett  
Mr. Arnold Grothues  
Mr. Charles Miller  
Ms. Amy Oberhelman  
Ms. Katy Poterjoy

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<sup>4</sup> See Comments of the National Retail Federation, CG Docket Nos. 02-278, 05-338, at pp. 3 - 8 (March 10, 2017).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See Comments of the National Retail Federation, CG Docket Nos. 02-278, 05-338, at p. 8 (March 10, 2017), and Comments of the National Retail Federation, CG Docket No. 17-59, at p. 14 (August 29, 2017).

<sup>8</sup> *Id.*